UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.15/1996/4
21 March 1996

ORIGINAL: ENGLISH

COMMISSION ON CRIME PREVENTION
AND CRIMINAL JUSTICE
Fifth session
Vienna, 21-31 May 1996
Item 3 of the provisional agenda*

REVIEW OF PRIORITY THEMES

Measures to combat the smuggling of illegal migrants

Report of the Secretary-General

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*E/CN.15/1996/1.

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INTRODUCTION

1. The present report was prepared pursuant to Economic and Social Council resolution 1995/10 of 24 July 1995, concerning criminal justice action to combat the organized smuggling of illegal migrants across national boundaries, adopted on the recommendation of the Commission on Crime Prevention and Criminal Justice at its fourth session. In that resolution, the Council requested the Secretary-General to remind Member States that had not yet done so of the importance of responding to the notes verbales sent to all Member States on 10 February and 9 June 1994 concerning the criminal legislation that they had enacted and other measures that they had taken to combat the smuggling of illegal migrants, and to submit to the Commission at its fifth session an updated report thereon.

2. It is the third in a series of reports on the matter. The first report (A/49/350 and Add.1),* prepared by the Secretary-General in response to General Assembly resolution 48/102 of 20 December 1993 and submitted to the Assembly at its forty-ninth session, provided a comprehensive overview of the background and scope of the problem of alien-smuggling. It also presented information received from a number of Governments, as well as from concerned intergovernmental organizations and United Nations specialized agencies, regarding measures and initiatives taken and envisaged to combat the smuggling of aliens. The second report (E/CN.15/1995/3),** submitted to the Commission at its fourth session, provided additional information on measures to combat alien-smuggling.

3. The present third report traces developments in respect of criminal law and other measures taken by Governments to combat the smuggling of illegal migrants, drawing on additional information received by the Secretary-General from the following 11 Governments in response to his notes verbales dated 21 August 1995 and 23 November 1995: Belgium, El Salvador, Greece, Holy See, Italy, Lebanon, Portugal, Romania, Slovakia, Sudan and United Kingdom of Great Britain and Northern Ireland. It also reviews action recently taken on the matter by United Nations intergovernmental bodies and conferences.

I. ACTION TAKEN WITHIN THE UNITED NATIONS SYSTEM

4. In its resolution 1995/10, the Council condemned once again the practice of smuggling illegal migrants. The Council recognized that it continued to be a widespread international activity frequently involving highly organized international syndicates that trafficked in human cargo without regard to the dangerous and inhumane conditions to which they were subjected, and in flagrant violation of domestic laws and international standards. The Council expressed its concern that a significant number of States had not yet enacted criminal legislation to combat all aspects of the smuggling of illegal migrants.

5. At its fourth session,[1] the Commission noted that the smuggling of illegal migrants, affecting most, if not all States, had to be combated by concerted action, particularly in the light of the fact that individuals involved in smuggling illegal migrants tended to use organized criminal groups to carry out their plans. The bribery and corruption that was involved constituted a threat to the rule of law.

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*The report contained a survey of replies received from the following States, United Nations bodies and specialized agencies and other intergovernmental organizations: Antigua and Barbuda, Austria, Bahrain, Belarus, Bulgaria, Burkina Faso, Canada, China, Costa Rica, Czech Republic, Denmark, Finland, Hungary, Japan, Jordan, Luxembourg, Malta, Monaco, Norway, Panama, Sweden, Switzerland, Syrian Arab Republic, Turkey, Ukraine, United States of America; Office of the United Nations High Commissioner for Refugees (UNHCR), International Civil Aviation Organization, International Maritime Organization and International Organization for Migration (IOM). The addendum contained replies provided by Australia, Denmark, Madagascar, Mexico, Myanmar, Philippines, Saudi Arabia and the Centre for Human Rights of the United Nations Office at Geneva.

**The report provided information received from the following States and intergovernmental organizations: Barbados, Brunei Darussalam, Cuba, France, Germany, Malawi, Nepal, Oman, Spain, Syrian Arab Republic and IOM.

6. Interrelated issues are being approached and addressed by other policy-making bodies and from different programme perspectives within the United Nations system. These fall within the realm of human rights, the advancement of women, children's rights, refugee rights and migration and development.

7. The attention of the Commission is invited, in particular, to recent action taken on violence against women migrant workers.* Traffic in women and girls and violence against migrant workers, which constitute abusive acts adverse to the status, situation, empowerment and advancement of women, have been condemned by the international community as human rights violations.

8. Regarding violence against women migrant workers, the General Assembly, in its resolution 50/168 of 22 December 1995, expressed its determination to prevent and eliminate all forms of violence against women and girls, and encouraged States to punish and redress wrongs done to women and girls subjected to any form of violence. The Assembly requested the relevant bodies and programmes in the United Nations system, when addressing the issue of violence against women, to give particular attention to the issue of violence perpetrated against women migrant workers, and to submit reports thereon to the General Assembly.

9. Regarding traffic in women and girls, the General Assembly, in its resolution 50/167 of 22 December 1995, stressed the need to eliminate, all forms of sexual violence and sexual trafficking, which were violations of the human rights of women and girls. The Assembly welcomed initiatives taken by the Commission and the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,** held at Cairo from 29 April to 8 May 1995, towards criminalizing the clandestine traffic in illegal migrants. Moreover, it concurred with the conclusion in the Platform for Action adopted by the Fourth World Conference on Women, held at Beijing from 4 to 15 September 1995, that the effective suppression of trafficking in women and girls for the sex trade was a matter of pressing international concern (A/CONF.177/20, chap. I, resolution 1, annex II).

10. In its resolution 50/167, the Assembly requested the Commission to consider appropriate follow-up to the Ninth Congress on measures to address the problem of trafficking in women and children, and to submit a report thereon to the Secretary-General, through the usual channels, for inclusion in his report to the Assembly. In addition, the Secretary-General was requested to submit to the Assembly at its fifty-first session, under the item entitled "Advancement of women", a comprehensive report on the implementation of resolution 50/167, with due regard for possible measures to improve the reporting procedure.

11. Regarding violence against migrant workers, it should be recalled that the Commission on Human Rights, in its resolution 1995/20 of 24 February 1995, condemned such acts of violence directed against women; that the General Assembly, by its resolution 45/158 of 18 December 1990, adopted and opened for signature, ratification and accession the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, annexed to resolution 45/158; and that the Working Group on Contemporary Forms of Slavery developed a draft programme of action on the traffic in persons and the exploitation of the prostitution of others (E/CN.4/Sub.2/1995/28/Add.1).

12. The attention of the Commission is drawn to other relevant developments and initiatives on the matter of international migration and development, in particular the recommendations of the International Conference

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*See the reports of the Secretary-General on violence against women migrant workers (A/49/354 and A/50/378) and the report of the Secretary-General on traffic in women and girls (A/50/369). See also the Guidelines on Prevention and Response to Sexual Violence against Refugees and the Guidelines on the Protection of Refugee Women, prepared by UNHCR.

**The Ninth Congress, in its resolution 8 on elimination of violence against women, invited States to examine ways consistent with their domestic law and national legal systems of ensuring that the prosecution of illegal acts concerning traffic in human beings and exploitation of the prostitution of others, committed abroad by one of their own nationals, is not hindered by gaps in international law or cooperation and that those acts are effectively sanctioned (A/CONF.169/16/Rev.1, chap. I).

on Population and Development, held at Cairo from 5 to 13 September 1994 (A/CONF.171/13, chap. I, annex, pp. 70-78). The General Assembly, in its resolution 50/123 of 20 December 1995 on international migration and development, invited the Commission on Population and Development to consider the interrelationship between international migration and development.

13. Moreover, the Assembly, in its resolution 50/123 requested the Secretary-General to designate a focal point within the Department of Policy Coordination and Sustainable Development to prepare a report to be presented to the Assembly at its fifty-second session containing concrete proposals on ways and means to address the issue of international migration and development, including aspects related to objectives and modalities for the convening of a United Nations conference on international migration and development.* It further called upon all relevant organs, organizations and programmes of the United Nations system to address this issue, and to submit their views to the Secretary-General. It invited the Council, at its organizational session for 1997, to consider including "International migration and development" as a theme in the context of its agenda for 1997. International migration, which would necessarily include issues such as alien-smuggling, might also raise important issues relating to human settlements, which would be dealt with at the United Nations Conference on Human Settlements (Habitat II), to be held at Istanbul in June 1996. The question of adequate shelter for migrants will be on the agenda of the Conference.

14. Also worthy of mention in respect of initiatives relevant to migrant smuggling are the activities of IOM, which continued to gather information on global migration and migrant trafficking flows around the world, and which issues a series of regular reports on migration trends worldwide. In addition, the International Scientific and Professional Advisory Council (ISPAC), which is part of the United Nations crime prevention and criminal justice programme network, organized an ancillary meeting on migration and crime during the Ninth Congress, and will convene an International Conference on Migration and Crime: Global Problems and Responses, to be held at Courmayeur, Italy, in 1996.

II. GOVERNMENT INITIATIVES CONCERNING CRIMINAL LAW AND OTHER ACTION BY THE CRIME PREVENTION AND CRIMINAL JUSTICE SYSTEM

15. The 11 States that replied to the notes verbales of the Secretary-General reported mainly on the initiatives and measures taken by them in criminal law and law enforcement to combat the smuggling of illegal migrants.

16. In 1995, the Government of Belgium modified its legislation relating to the access and entry of migrants, and their stay and establishment of residence in the country. The legislation defined penalties for illegal migration involving non-nationals as well.

17. The Government of El Salvador took measures to reinforce all borders of the country so as to detect more effectively any clandestine activity linked to illegal trafficking in persons and illegal migration. It had created within the National Civil Police a specialized Border Division to prevent and combat such activities. It had further established stringent requirements at airports in relation to travel and travel documentation and the falsification thereof. Non-documented persons were considered to be illegal migrants; they were to be detained and then deported to their last country of legal entry. Under the penal code, those entering the country illegally were to be deported rather than prosecuted where there was insufficient evidence against them. Modification of some of the laws concerning assisting in illegal migration were being considered, so that those responsible for supporting or aiding this activity would be subject to the full penalties of criminal law.

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*See Council decision 1995/313 of 27 July 1995.

18. In Greece, the law on Entrance-Exit, Stay, Employment, Deportation of Foreign Nationals, Refugee Immigrant Recognition Procedure and Other Provisions, enacted in 1991, provided for penal and administrative penalties against smugglers of illegal migrants, in line with the European Union standards on the matter and with the regulations stipulated by the Schengen Agreement. In the light of trends and developments in alien-smuggling, appropriate measures were being put into effect on the part of the Government, with emphasis on operational activity along land and sea borders, as well as within the country, so as to deter illegal border crossings and to break up smuggling networks. It was the intention of Greece not to proceed to the elaboration of further legal instruments at the present time, as it was of the view that the matter was being adequately addressed by existing national legislation.

19. The Holy See reported that the problem of the smuggling of illegal migrants was not of concern to the Government, as the Vatican City State was a small territory where strict entry controls were enforced.

20. Italy reported that it had been affected by immigration-related problems only recently. Until 1985, the only legal provisions concerning foreigners in Italy were contained in several articles of the consolidated text of Security Law, dating back to 1931. In 1986, the Parliament enacted a law designed to regulate the presence in Italy of immigrants. It addressed, however, only the employment aspect of the phenomenon, and in fact provided for a possible regularization of illegal immigration which had already taken place in Italy and had been absorbed by employment opportunities. The law was considered to be unsatisfactory, as only 12,000 illegal immigrants decided to leave the country.

21. In 1989, the Parliament of Italy issued a decree providing for urgent rules on political asylum, entry and residence of extra-European-Community and stateless immigrants already present in the territory. By that decree, a second chance of regularizing their status was offered to immigrants. But the new law did not prove successful either, and, upon expiration of the six-month time-limit accorded to regularize their position, only 230,000 extra-European-Community immigrants had applied for a regular status as legal residents. Five years after its entry into force, the law had proved to be inadequate, in particular with respect to the provisions for expulsion of illegal immigrants from the country and for the limitation of illegal entries. The number of illegal immigrants had increased considerably in recent years, especially those coming from States that, for different reasons, have been confronted with serious political, economic and social problems.

22. In order to address the situation more effectively, both the Government and the Parliament of Italy were undertaking a revision of the entire set of existing provisions regarding the entry and the residence of immigrants. In order to accelerate the implementation of the Schengen Agreement in Italy, the border police was applying more effective border controls by increasing the staff of the police force, as well as by introducing a computerized data system. Given the length of the Italian coastal border, such measures were deemed essential to reduce illegal landing attempts and to enhance the possibility of tracing those who entered the territory illegally.

23. The Government of Lebanon reported that in 1991, security authorities started taking strict measures to combat the counterfeiting of travel documents, and, by 1993, it appeared that such criminal activity had ceased. The measures taken to prevent the illegal emigration by nationals of Lebanon included not permitting citizens to depart the territory without legitimate visas to the countries of destination. To prevent an influx of illegal migrants into Lebanon, motorized units were vigilant at land and sea borders. Detained illegal migrants were taken to the General Directorate of Public Security, and contacts were made with the embassies of their countries of origin in order to initiate deportation procedures.

24. In Portugal, the Government had taken action to revise the system, procedures and penalties relating to entry into the country, to the exit and expulsion of non-nationals, and to the activities of persons who aided or arranged illegal migration. Aiding or facilitating illegal migration carried a maximum term of imprisonment of two years, or of three years if a profit motive is determined. A term of one to five years of imprisonment could be imposed for commission of the offence carried out or aided by a group, organization or association. All those associated with such organized illegal activity were subject to two to eight years of imprisonment.

25. Aside from the above-mentioned measures, the Border Patrol Service of Portugal continued to operate its Specialized Criminal Investigation Team, established in 1993 solely for the purpose of investigating this particular form of criminality. Preventive measures relating to border control remained the responsibility of personnel specialized in matters of detection of fraudulent documentation, and who were well equipped with the necessary technical aids. Within the framework of the European Community and the 1990 Convention Applying the Schengen Agreement, measures of information exchange and coordination of practices, policies and procedures were taking shape in Portugal.

26. The Government of Romania, during recent years, had been confronted with the complex manifestations of illegal international migration. It had adopted legislation to protect the country against violation of its borders and territorial integrity. In 1992, Parliament adopted legislation prohibiting illegal entry into or exit from the country, subject to a penalty of three months to two years of imprisonment. A term of imprisonment of six months to three years could be imposed on anyone who organized illegal passage across the border, and of up to five years in the case of such an act being committed by organized groups for profit and for those using arms in the commission of the offence.

27. Legislation adopted by the Senate of Romania to combat alien-smuggling stipulated, *inter alia*, that it was the responsibility of transport entities to ensure that proper documentation was presented for exit and entry. The Penal Code of Romania provided sanctions for the falsification of official documents and the utilization of such documents for purposes of passage.

28. Romania had concluded agreements with European countries to readmit nationals who had come into "irregular situations" in terms of immigration. Many cooperation agreements relevant to illegal migration and to traffic in persons had been concluded, and various exchanges of information between the Ministry of Interior of Romania and that of other countries had been successfully pursued. Of particular importance in that regard were the trans-border cooperation agreements concluded with the authorities of its neighbouring countries.

29. Since September 1995, the Ministry of the Interior and the Ministry of Foreign Affairs of Romania had attempted to put into operation a new methodology for the issuance of visas, requiring an invitation by the citizens of countries presenting a risk to Romania in terms of migration. Within the framework of international cooperation to combat illegal migration, Romania participated actively in different forums and conferences.

30. The Government of Slovakia noted an acute problem of illegal migration within Europe. Persons coming from countries with relatively weak economies and from those plagued by military conflict or warfare had, in increasing numbers, sought to enter countries of western Europe. Transit States, in particular those of central and eastern Europe, were facing enormous pressure, strain on their capabilities and security risks. Faced with growing restrictions on terms of entry and rigidity in immigration requirements, individuals seeking to migrate had resorted to illegal means, and smugglers, taking full advantage of the regional situation, had substantially increased their activities.

31. Slovakia had taken many measures in criminal law and law enforcement over the past few years, focusing especially on penal sanctions for the organized transnational criminal activities of smugglers and their accomplices. In October 1994, a law on organized transnational crime was enacted. The Government had committed itself, and become a party, to readmission treaties with border States and with Croatia, Romania and Slovenia. Despite the measures taken, however, the Government noted that it had been unsuccessful in curbing illegal migration in significant ways and in finding an effective solution.

32. Further, it was of the view that priority should be given to developing the necessary regional and cross-regional cooperation and exchange of information to combat organized trans-border criminality such as migrant smuggling. It was also of the view that priority attention should be given to studying migrant smuggling operations so as to take preventive measures and forestall acute illegal activity.

33. In the Sudan, a primary concern was the continuous flow of refugees from neighbouring countries because of civil war, famine and drought. It reported that national action to combat organized crime and the illegal movement of persons across international frontiers fell into three categories: (a) legislative measures, which included prohibition and provided for imposition of criminal penalties for involvement in such activities; (b) administrative measures, which included the establishment of agencies to deal with such activities, as well as the provision of appropriate training to enhance efficiency; and (c) technical measures, which included preventive and investigative action.

34. Border points had been established in the Sudan to prevent illegal entry and exit. More stringent immigration restrictions and closer monitoring of the entry and exit of non-nationals had also been undertaken.

35. The United Kingdom welcomed any measures designed to improve bilateral and multilateral cooperation to combat organized illegal immigration, and expressed its intention to pursue the objective of combating the trafficking of migrants.

36. In the United Kingdom, legislation had provided for the prosecution of those facilitating the illegal entry of persons by deception, subject, upon indictment, to a term of seven years of imprisonment. A national of the country might be prosecuted for the offence of "facilitation",* even in cases where relevant acts were committed in another country. An act of 1971 enabled the courts, in certain circumstances, to order the forfeiture of a ship, aircraft or vehicle used for the purpose of illegal entry into the country.

37. A successful countermeasure recently introduced in the United Kingdom was the use of sniffer dogs in searching freight vehicles. Another was the establishment by the Kent police, in 1994, of a Facilitation Support Unit to prosecute those assisting in illegal entry through South Coast Channel ports. In 1994, the Unit identified 177 persons involved in 109 incidents - more than double the number in 1993.** In addition, 447 cases of clandestine illegal entrance were detected in the Dover area. This figure represented an increase of 75 per cent over the previous year.

38. Under reciprocal arrangements with France, the United Kingdom posted an Immigration Officer in Paris. An officer of the *Police de l'air et des frontières* was based at the Immigration Service Headquarters in London. An Airline Liaison Officer was also posted at New Delhi to work with carriers and contribute to efforts to prevent the "carriage" of inadequately documented passengers. Consideration was also being given to the appointment of additional Airline Liaison Officers at other strategic locations around the world.

39. The United Kingdom was concerned about the use of forged documents and, in an effort to raise the level of awareness on the matter, provided forgery detection training to all immigration service staff, and had established a specialist forgery detection section. In that regard, the Government expressed its willingness to consider any requests for assistance from States, and to receive officials from other States for the purpose of training in matters of forgery detection.

III. ACTION REQUIRED OF THE COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE

40. The Secretary-General has presented to the Commission a series of reports containing the information and views provided by 53 Governments concerning criminal law and other measures adopted, as well as the information provided by five organizations on activities undertaken, to combat the smuggling of illegal migrants.*** The Commission might now wish to consider whether the information is sufficient, or

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*In 1992, thirty-four persons were convicted of this offence in the country.

**As compared with 20 persons in 1987.

***All documents in the series of reports have been made available to the Commission.

whether additional information on other aspects of migrant smuggling would be required for it to recommend further action.

41. Should the Commission be satisfied with the nature and amount of information presented thus far, and bearing in mind the legislative and policy pronouncements made by the General Assembly and the Council and its subsidiary bodies, it might wish to specify practical measures for an international course of action to guide States in combating an increasingly acute criminological phenomenon of transnational dimension. In that regard, the development and effective implementation of national, subregional, regional and interregional security plans might be considered.

42. Given the complexity of the issues involved and the substantial role played by transnational organized crime in global criminal activity, international cooperation, particularly in trans-border law enforcement, is crucial, and measures need to be specified and applied by all concerned. Moreover, a better common understanding of the problem to be tackled would need to be reached, and a precise, well-defined course of action pursued. To that end, and bearing in mind the increasing attention being paid and the growing importance being attached to the matter by States, more dialogue and joint action between source, transit and recipient States might be fostered, particularly across regions and in international forums, including consideration of the elaboration of a new international instrument.

43. In determining further action to be taken to combat migrant smuggling, the Commission might wish to consider integrated action involving other programmes and bodies within the United Nations system that deal with related issues, such as the Department of Policy Coordination and Sustainable Development, UNHCR, the United Nations Development Fund for Women, the Division for the Advancement of Women and the International Research and Training Institute for the Advancement of Women, as well as other functional commissions of the Council, in particular the Commission on Population and Development, the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on the Status of Women.

44. In connection with migration and development, and, in response to General Assembly resolution 50/123, the Commission might wish to pronounce itself on ways and means of addressing the issue of international migration and development to be considered at a United Nations conference on migration and development to be held in 1997. In particular, the Commission might wish to invite the conference to include, as an integral part of its agenda, illegal migration and its many interrelated problems.

45. The important issue of the law of the sea might also be explored. Maritime control is of special importance, given the known volumes of illegal population movements that occur by sea. In fact, maritime and coastal border control are central to preventing and detecting a good deal of the illegal global trafficking.

46. Finally, the Commission might wish to pronounce itself on the problem of, and possible measures to combat, trafficking in women and children, for inclusion in the report of the Secretary-General to the General Assembly at its fifty-first session, as requested by the Assembly in its resolution 50/167.

Notes

[1]See *Official Records of the Economic and Social Council, 1995, Supplement No. 10* (E/1995/30), chap. III, paras. 71-73.

UNITED
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Economic and Social
Council

Distr.
GENERAL

E/CN.15/1996/4/Add.1
21 May 1996

ORIGINAL: ENGLISH

COMMISSION ON CRIME PREVENTION
AND CRIMINAL JUSTICE
Fifth session
Vienna, 21-31 May 1996
Item 3 of the provisional agenda*

REVIEW OF PRIORITY THEMES

Measures to combat the smuggling of illegal migrants

Report of the Secretary-General

Addendum

INTRODUCTION

1. The present addendum to the report of the Secretary-General on measures to combat the smuggling of illegal migrants (E/CN.15/1996/4) contains additional information received from the Governments of Tunisia and the United States of America in respect of legislation and other measures aimed at combating alien-smuggling. The two replies, when added to those referred to in paragraph 40 of the report of the Secretary-General, bring the total number of Governments having provided such information to 55; five organizations have also reported on their activities in this regard.

ADDITIONAL INFORMATION FROM GOVERNMENTS ON LEGISLATION AND OTHER MEASURES TO COMBAT ALIEN-SMUGGLING

2. The additional information received by the Secretary-General from the Governments of Tunisia and the United States is summarized below.

*E/CN.15/1996/1.

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3. Tunisia indicated that it does not have a problem of illegal migrant smuggling. Nevertheless, the Government has enacted a number of regulatory laws. In March 1968, Tunisia adopted a law on the status of migrants in Tunisia, setting out the conditions for entry, residence and exit. The law includes provisions establishing penalties for any person who knowingly, either directly or indirectly, assists or attempts to assist an alien in entering or leaving Tunisia or in travelling or residing illegally in Tunisia.

4. The law obliges migrants, upon entry into Tunisia, to produce a passport or a travel document permitting the bearer to return to the country of its issuance. The taking-up of employment is subject to an employment contract drawn up according to the regulations in force. Alien residence is governed by conditions relating to temporary and normal residence. By law, any alien wishing to remain in Tunisia for more than three consecutive months or for six months with an interruption in the same year is required to obtain a visa and temporary residence card, the validity of which may exceed one year by special authorization of the Minister of Internal Affairs. The police may withdraw such a card if the bearer becomes involved in any activity which presents a "threat to public order", or if the grounds on which the card was issued are no longer valid. By a law of 1968, the normal residence card is issued to those aliens who were in Tunisia and lived in the country without interruption; who had legally resided in Tunisia for more than five years without interruption; who were married to Tunisians; who had Tunisian children; or who had rendered outstanding service to Tunisia.

5. The United States is pursuing a four-part strategy to control illegal immigration, through measures aimed at: regaining control of national borders; protecting United States workers and "removing the job magnet through work-site enforcement"; aggressively removing criminal and other deportable aliens; and securing the resources needed to support enforcement of the strategy against illegal immigration. The national law against the illegal smuggling of individuals into the country is embodied in the Immigration and Nationality Act, of which, the section entitled "Bringing in and harbouring certain aliens", sets out criminal penalties, imprisonment and fines for the crimes of bringing or attempting to bring aliens into the country at other than a port of entry, transporting or harbouring undocumented aliens, and encouraging or inducing an alien to come to the country in violation of its law. This Act also provides for the fining of carriers for knowingly transporting an improperly documented alien, and for the seizure and forfeiture of any conveyance, vessel, vehicle or aircraft used for such purposes. Congressional legislation tabled in 1995 increases penalties for alien-smuggling and expands law enforcement authority, including that allowing for the seizure and forfeiture of real or personal property deriving from or traceable to proceeds obtained directly or indirectly from alien-smuggling or used to facilitate or intended to be used to facilitate alien-smuggling. The recently enacted 1996 Anti-Terrorism and Effective Death Penalty Act expanded the authority to expedite the exclusion and deportation of an alien excludable for document fraud or lack of proper documents. Legislative changes under consideration would greatly strengthen the capacity of the country to repatriate aliens smuggled by vessels when it is determined that the number or circumstances of the aliens *en route* to or arriving in the country show the serious and illegal nature of the migration.

6. The United States has also increased its personnel and other resources required to implement the above-mentioned measures. Since 1993, there has been a 40 per cent increase in the number of Border Patrol agents, and between 700 and 1,000 additional agents are foreseen annually through the year 2000. In 1996, 587 new inspection personnel were engaged to improve legal entry and enforcement at key ports of entry on the south-western and northern borders. To improve work-site enforcement, 63 million United States dollars ($) were allocated for 384 new agents and support staff to investigate employer violations, specially targeted industries, abusive employers and sweatshops. An additional $140 million and 1,406 new positions increased the capacity to detain and remove criminal and other deportable aliens from the country. Funding will also be applied to create a modern transportation network and a "computerized detention space management system" to maximize the efficiency of alien removal efforts.

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UNITED NATIONS

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Economic and Social Council

Distr.
GENERAL

E/CN.15/1996/5
11 April 1996

ORIGINAL: ENGLISH

COMMISSION ON CRIME PREVENTION
AND CRIMINAL JUSTICE
Fifth session
Vienna, 21-31 May 1996
Item 3 of the provisional agenda*

REVIEW OF PRIORITY THEMES

Action against corruption

Report of the Secretary-General

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*E/CN.15/1996/1.

V.96-82223T

INTRODUCTION

1. In pursuance of General Assembly resolution 49/157, the Commission on Crime Prevention and Criminal Justice at its fourth session considered the recommendations of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Cairo from 29 April to 8 May 1995. The Commission had before it a background paper prepared by the Secretariat on international action against corruption, which included the draft international code of conduct for public officials (A/CONF.169/14, annex I). The draft code had been prepared pursuant to the resolution entitled "Corruption in government" of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,[1] held at Havana from 27 August-7 September 1990. The draft code was submitted to the Commission at its fourth session for its review and comments. The Commission was of the opinion that the draft code, when finalized, could constitute an important tool for the operational activities of the United Nations crime prevention and criminal justice programme, as well as for States wishing to include similar codes in measures to prevent and control corruption.[2]

2. On the recommendation of the Commission, the Economic and Social Council adopted resolution 1995/14, in which it requested the Secretary-General to continue his consultations with Governments to revise further the text of the draft international code of conduct for public office holders, annexed to that resolution, and to present it to the Commission at its fifth session.

3. Accordingly, the Secretary-General requested the views and comments of Governments on the draft code. Replies were received from 36 States.* A revised version of the draft international code of conduct for public office holders, which reflects the replies received, is annexed to the present report.

I. RECENT INTERNATIONAL INITIATIVES AGAINST CORRUPTION

4. The issue of corruption and its impact upon public service and government institutions has received dramatically increased attention at the international level. Action at the national level has been coupled by international efforts to promote a culture of good governance and strengthened institutions and to systematize legislative measures to prevent and control the spread of corrupt practices. Various international organizations have dealt with the matter, proposing action towards international cooperation in the fight against corruption. Some of the initiatives at the international level are described below.

5. The approach of the World Bank to corruption issues is coordinated by the Operations Policy Department. The Department is responsible for ensuring consistency in operational policy and processes of the World Bank and is also the central reference point for governance and public sector management.

6. The International Trade Centre (United Nations Conference on Trade and Development/General Agreement on Tariffs and Trade) issued in 1993 a guide on improving public procurement systems that included a chapter on measures to combat corruption. The guide highlighted the need to fight corruption as a means to improve financial accountability on the way towards good governance. The need for political support and preventive measures was considered of the utmost importance in combating corruption in public service.

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*Argentina, Australia, Austria, Belarus, Bolivia, Canada, Chile, China, Croatia, Cuba, Denmark, Egypt, Estonia, France, Germany, Holy See, Iran (Islamic Republic of), Iraq, Japan, Jordan, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Oman, Panama, Philippines, Qatar, Republic of Korea, Singapore, Slovakia, Spain, Turkey, United Kingdom of Great Britain and Northern Ireland and United States of America.

7. The Organisation for Economic Co-operation and Development (OECD) established in 1994 a working group on bribery in international business transactions. The main activities of the working group involved a review of steps taken by OECD member States to implement the recommendations of OECD on that topic and the accomplishment of an in-depth analysis of specific priority issues in connection with corruption such as making it a criminal offence, establishing accounting standards and abolishing tax deductibility of illicit payments in foreign countries. In Paris on 13 and 14 March 1995, OECD organized a Symposium on Corruption and Good Governance, which highlighted a number of issues, including procurement as an activity that might be subject to corruption and illicit payments being made to secure contracts funded by international aid. In connection with the decline of public confidence in government, OECD decided to conduct an inquiry into the management of ethics in selected OECD member States. As part of its programme of cooperation with central and eastern European countries, OECD has launched projects on expenditure management, administrative oversight, development of human resource management and regulatory reform. It plans to organize in 1996 seminars for public officials on means to combat money-laundering and corruption in the public service.

8. The Organization of American States organized a special conference, held at Caracas from 27 to 29 March 1996, to adopt an inter-American convention against corruption drafted by its working group on integrity and public ethics.

9. In the Council of Europe, a multidisciplinary group on corruption was established within the Directorate of Legal Affairs, under the responsibility of the European Committee on Crime Problems and the European Committee on Legal Co-operation, to examine what measures might be included in a programme of action at the international level against corruption. The terms of reference of the group had been drafted by the Committee of Ministers at a meeting held in 1994. The group held its first two meetings in 1995 and adopted a draft programme of action against corruption. In March 1996, the group held a meeting where the Programme of Action was finalized and a preliminary draft convention on corruption and a preliminary draft framework convention were examined. In addition to the proposed convention and framework, the priorities of the group include the study of the definition of corruption and of the feasibility of an international convention on civil remedies to fight corruption. A European code of conduct for civil servants will be the object of the group's work, together with a study on corruption of international civil servants and elected representatives, a study on the question of "laundering" of proceeds devised from corruption and the assessment of existing instruments of international cooperation against corruption.

10. The Inter-Parliamentary Union (IPU) held its ninety-fourth Inter-Parliamentary Conference at Bucharest in October 1995. The 565 representatives of the parliaments of 118 countries adopted, *inter alia*, a resolution on parliamentary action to fight corruption and the need for international cooperation in that field. In that resolution, the Inter-Parliamentary Conference, recalling the work of the United Nations, the Council of Europe, the Financial Action Task Force and OECD in that field, expressed its resolve to establish a working group to update the draft convention on measures to be taken in the international field against those guilty in the exercise of public office of fraudulent enrichment prejudicial to the public interest, adopted in 1962 by the fifty-first Inter-Parliamentary Conference, with a view to submitting the draft convention to the United Nations for consideration.

11. The European Bank for Reconstruction and Development has a mandate to foster transition towards open, market-oriented economies and to promote private and entrepreneurial initiatives in countries in central and eastern Europe. In doing so, the Bank seeks to ensure that the investment climate in countries in which it operates is not adversely affected by corrupt practices. In 1995, the office of the general counsel of the Bank finalized a paper on corrupt practices and money-laundering in the context of the operations of the Bank. The paper identified current rules, procedures and practices of the Bank to deter, detect and remedy problems related to corruption and money-laundering. The paper also noted the approach taken by other international financial institutions and described some of the recent initiatives at the international and regional

level to combat corrupt practices and money-laundering, summarizing the approach of the Bank to such problems and recommending improvements to its rules, procedures and practices.

II. COMMENTS BY STATES ON THE DRAFT INTERNATIONAL CODE OF CONDUCT FOR PUBLIC OFFICE HOLDERS

12. In accordance with Council resolution 1995/14, the Secretary-General continued his consultations with Governments to revise further the text of the draft international code of conduct for public office holders. An analysis of the replies is provided below. Some of the replies cover the general framework of the draft code, while others concern both the structure and some or all of its articles.* For the sake of uniformity and ease of reference, the present analysis was prepared referring to the original text of the draft code as it appears in the annex to Council resolution 1995/14, reflecting the comments received under each article. A revised version of the draft code, which reflects the comments made by States, is contained in the annex to the present report.

13. Eighteen States expressed a positive attitude towards the principles underlying the draft code, considering it a more comprehensive text that contained improvements regarding legal terminology. Some States held the view that, once adopted, it would have a positive effect on combating corruption and fostering integrity in public institutions. Some States included copies of their national legislation on corruption, which confirmed that the draft code embodied legal principles already existing in several legal settings. In the view of one State, the code might not be sufficient in itself to prevent corruption if pre-emptive administrative measures, including fair and proper recruitment procedures, education and in-service training for public officials and proper remuneration, were not part and parcel of a broader international action plan for a more effective strategy. Another State viewed the drafting of such a code as a desirable and educative tool that might be helpful in encouraging States to consider developing and/or improving their own codes.

Section I. General principles

14. Fourteen States provided comments on section I of the draft code.

15. With regard to article 1 of the draft code, the main comments referred to the formulation of "public office holders". One State (Japan) proposed that the wording "public officials" should be used or, alternatively, that its interpretation should rest with each country; another State (Canada) proposed (a) adopting two definitions for "public office holders" and for "public office", the former to include politicians as well, and (b) retaining the wording "public office holders". Comments were made by three other States (China, Germany and the United Kingdom) on the second part of article 1. It was proposed that any reference to the system of government and the part that specified governmental offices should be deleted, since civil servants owed loyalty to the duly constituted government only and not to branches of it or to other manifestation of public interest. Because of the deleterious effects of corruption of foreign entities or persons on political and economic stability, one State (the United States) suggested that the code of conduct should make it explicit that domestic and foreign persons and entities should not command the loyalty of public officials. Finally, it was suggested by one State (Spain) that the definition of "public office" should be strengthened by proposing that a reference be made to universal ethical principles and laws and to the duty to demonstrate absolute devotion when acting on behalf of government. Another State (Canada) proposed replacing the word "primary" with "ultimate", as the former would seem to reduce the accountability of public officials to their superiors.

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*In addition to providing substantive comments, China, Jordan, Qatar and Spain provided suggestions on ways to improve the translation of the international draft code into Arabic, Chinese and Spanish.

16. Most of the comments concerning article 2 and article 2 *bis*, which had been placed in brackets, were related to the rights and obligations of public office holders and to their duty to execute, or to refuse the execution of, orders that did not conform with the law. Regarding article 2, it was suggested (by Canada and the Holy See) that the code of conduct should promote the duties of diligence, responsibility, efficiency and honesty for public officials and the need for impartiality and efficiency on the part of the public administration. Some States proposed the deletion of article 2 *bis*, considering it too detailed to be of universal application, particularly in view of its reference to the issue of carrying out an order against the law. Those States felt that that matter should not be dealt with by international standards but should be left to national legislation. Other States indicated their readiness to accept article 2 *bis*, provided that its formulation was changed to introduce safeguards for the public office holders who were obliged to obey such orders. Such safeguards could refer to the reiteration of the order in writing. Nevertheless, some of those States made clear that the order should not be executed if it constituted a criminal offence.

17. Article 3 contained a reference to the issue of the abuse of power. Some States felt the need for a new article or at least more specific language dealing with the subject. However, no suggestions were provided. Other States focused their comments on the principle of equality before the law as the legal support of the provisions of article 3. In the view of one State (the Holy See), article 3 could be reinforced by including the obligation to admit every citizen, without discrimination, to public services, the prohibition of any preferential treatment and the obligation to exclude public officials from decisions on matters in which they were personally involved or had any interest. The promotion of affirmative action policies was seen as relevant by one State (Canada); it proposed removing the square brackets from the last sentence of article 3.

Section II. Conflicts of interest and disqualification

18. Eighteen States provided their comments on section II of the draft code. Three of the States that provided their views on article 4 (China, the United Kingdom and the United States) felt that it was discriminating to prohibit public office holders from advancing interests when those interests were of a legitimate nature or the result of a government policy. In order to avoid an overly broad statement, one State (the United States) proposed that "never in any way" should be changed to "not" and that the phrase "personal or" should be deleted. Two other States (Australia and the Holy See), however, suggested that that provision should be reinforced by asking public office holders to refrain from any action that could be seen to be incompatible with their office and by declaring if the use of their authority could represent a benefit for their political party or group. One State (France) indicated that the provision was in line with its national legislation and another (Croatia) suggested that similar provisions should be further strengthened for police officers. One State (Spain) proposed retaining the word "improper", which had been deleted in the original text, with reference to the advancement of interests of public office holders, as the deletion could have an effect opposite to the one sought.

19. The comments provided on article 5 were mainly aimed at reinforcing transparency, and therefore democracy, within public administration. Two States (Argentina and Mexico) felt that it was advisable to remove the possibility of exemption from the obligation to declare the public office holder's private interests in a matter pertaining to the duty of office. According to those States, the information available on the individual concerned should be open to public scrutiny as, in their view, the present formulation could be misleading since it seemed to imply a discretionary power for the public official concerned. Two other States (France and Germany) suggested that it might be forbidden for public officials to exercise any other function, with the exception of intellectual, artistic and, in some cases, academic activities, or that, in situations of possible conflict of interest, public office holders should request their hierarchical superior to exclude them from the decision-making process. Three States (Turkey, the United Kingdom and the United States) also suggested that article 5 should be either redrafted or combined with article 8, as both would impinge on the principle of protection of privacy. One of those States (the United States) suggested that, should that be the case, only the third sentence of article 5 should be retained, so that it would read: "In situations of possible or perceived conflict of interest between public office holders' public duties and private interests, they shall,

if possible, disqualify themselves from any decision-making process involving such conflict of interest." Finally, one State (Canada) argued that politicians should not be prevented from having outside interests and from being active participants in the community, as that participation was essential to the health of a parliamentary democracy.

20. Two comments were received on article 6. The States (Canada and the United Kingdom) suggested that the present wording was overly broad and appeared to include information that might be public knowledge. An amendment was proposed that would read "... use public property and services, or misuse information". The adoption of a new paragraph that should address the use of information, distinct from the use of services and properties, was also suggested by one of the States (Canada).

21. The comments received on article 7 referred to two issues contained therein. First of all, three States (Canada, Oman and Spain) expressed the opinion that the period after separation from public service referred to in the first line should be specified. Those States indicated that one and two years, respectively, should be the minimum time required to lapse between the end of public service and the acceptance of employment or consultancy assignments in a firm that was in financial relationship with the public office holder's prior governmental department or agency. Two States (Argentina and the United States) were concerned that that provision would lead to the unfair exclusion of the public office holder from the labour market and suggested instituting a requirement for governmental permission only where a direct relationship existed between the nature of the service that had been left and the activity to be taken up. One State (France) noted that its criminal code was in line with that provision and that an authorization had to be requested by the public office holder before accepting any such assignment. Under its legislation, an ad hoc administrative commission had been established to deal with such cases, the deliberations of which, however, were not binding for the court if the criminal code had been violated. One State (Mexico) suggested replacing the wording "position of defined responsibility" with "managerial positions" and proposed two new articles to prevent public office holders from expressly abusing their position by intervening in decisions pertaining to matters in which they might have a personal interest. The same State also suggested specifying the non-compatibility of posts and working hours. The need for specific policies to be observed was expressed by one State (Canada), which, in proposing an alternative formulation for article 7, suggested that States should have in place post-employment compliance measures designed to reduce to a minimum, without unduly restricting former employees in seeking employment, the possibility of conflict of interest, preferential treatment or unfair advantage.

Section III. Disclosure of assets

22. Comments on article 8 were provided by 16 States. Some of the States supported article 8 and mentioned that their national legislation included similar provisions. Amendments were suggested that would specify the periodicity of the disclosure, a minimum threshold below which reporting would not be required, and the party to whom the information should be disclosed. Other States, whose legislation did not foresee such a provision, were concerned about the fact that the disclosure might be perceived as an unwarranted intrusion of privacy. Along those lines, it was suggested that the requirement should be limited to sensitive areas of public service or to cases where an abuse of power might be suspected and that the last sentence should be revised to read: "All information provided shall be treated as confidential but may be disclosed at a country's discretion within the framework of special procedures." The deletions indicated in the original text of the draft code were considered desirable by one State (Spain). Another (Canada) proposed reformulating the article and placing it under section II, which dealt with measures concerning conflicts of interest.

Section IV. Acceptance of gifts or other favours

23. There were two formulations for article 9 of the draft code. Ten of the 16 States that provided the comments on article 9 suggested adopting the wording that had been placed in brackets, adding that it was

more concrete and mandatory and was not permissive in character. The first formulation for article 9 was said to allow too much discretion to public office holders in deciding which gifts could or could not be accepted. Two States (Oman and Spain) proposed adopting a text similar to the formulation placed in brackets, while another (the United States) proposed adding a clause that would permit Governments to authorize the acceptance of gifts if the refusal would cause offence or embarrassment. One State (the Islamic Republic of Iran) suggested that, if in the first formulation the word "shall" would be replaced with "must", there would be no need to adopt the second, bracketed formulation. Two States (Denmark and Malaysia) attached their national legislation. In one of them the acceptance of gifts or other favours of any monetary value was considered a criminal offence if given to expedite a transaction. The other contained legal provisions that were in line with the second formulation. One State (Canada) was of the opinion that neither formulation of article 9 dealt with the important issue of apparent conflict of interest; it suggested an alternative formulation for consideration, according to which public officials should not solicit or accept any gifts or benefits when such gifts or benefits could influence, or reasonably be perceived to influence, the exercise of their functions, their judgement or the performance of their duties.

Section V. Confidential information

24. Six States commented on article 10. States suggested reinforcing the provisions contained in article 10 by extending their scope to cover all the information of which public office holders might be aware of by reason of their office or post and not only that of a confidential nature. One State (the United Kingdom) argued that the "needs of justice" could not imply that any disclosure was proper on the basis of an individual's own assessment of those needs. Another (the United States) remarked that, in some countries, only disclosure of certain types of information that were considered sensitive was prohibited; it suggested that the extent of confidentiality should be left to the discretion of national legislation. The national legislation attached by one State (Malaysia) contained provisions according to which the disclosure of confidential information by public office holders was considered a criminal offence. It was also suggested by one State (the Islamic Republic of Iran) that the provisions of article 10 might be strengthened by adding the phrase "and the public office holders are responsible to observe this matter" at the end of the paragraph.

Section VI. Political activity

25. The five States that provided comments on article 11 suggested changes or a new formulation that would strengthen its provisions by expanding the range of political activities or acts which were incompatible with the tenure of a public office or which might impair public confidence in public administration. One State (Canada) felt that if politicians were included in the definition of "public office holders", article 10 should be sensitive to that fact, as politicians were naturally going to be involved in political activity.

Section VII. Reporting, disciplinary action and implementation

26. During the fourth session of the Commission, there was extensive debate on article 12. It was considered appropriate to place it in brackets in order to allow for further input from Governments. Eight of the 19 States that provided comments on section VII of the draft code proposed deleting article 12, as it might raise problems owing to the principle of expediency that prevailed in certain States. One State (Spain) also proposed a text that would permit the control aimed at by the provision of article 12, avoiding impunity and encouraging reporting. One State (France) favoured retaining article 12.

27. Alternative formulation 1, which would replace articles 13 and 14 with a single article, was seen as being more general. The vast majority of the States that commented on this issue preferred it. Some States, however, felt that adjustments could be made to this part of the draft code. One State (Germany) proposed adopting alternative formulation 1 to replace article 13 and deleting article 14 to give reasonable legislative discretion on the matter to each country. Two States (the Islamic Republic of Iran and the Republic of Korea) suggested adopting alternative formulation 1 for the whole section; one of the States also proposed

deleting the word "reporting" from the title of section VII. One State (Argentina) suggested the adoption of alternative formulation 1 but, at the same time, felt that a protective clause on the need to compensate third parties injured as a result of a violation should be included. One State (the United Kingdom) proposed adopting alternative formulation 2, provided that the code specified breaches of rules of conduct under the terms and conditions of service. One State (China) felt that there was a need to discuss articles 13 and 14 further. One State (Canada) suggested that reliance on criminal law and other sanctions were not necessarily the best means of promoting integrity within government in association with a code of conduct and that the use of education and consultation were also important and deserved to be emphasized.

III. ACTION REQUIRED OF THE COMMISSION

28. At its fourth session, the Commission in principle supported the draft international code of conduct for public officials. That support was reiterated by the majority of States that responded to the Secretary-General's request for comments. In providing their comments, States made many substantive suggestions to improve the draft code. Many offered additional information and legislative texts that demonstrated the timeliness and usefulness of the draft code. Strengthening international action against corruption and improving the provision of practical assistance in this area to requesting States will require practical high-quality tools that are of relevance to the efforts of States at the national level. In view of the above, the Commission may wish to adopt the draft code of conduct for public officials, encouraging States to be guided by its provisions in their efforts to prevent and control corruption and promote accountability and transparency.

29. Taking into account the discussions at its third and fourth session, and the results of the plenary meeting on corruption held at the Ninth Congress, the Commission may wish to direct attention to the modalities of increasing technical assistance activities of the Crime Prevention and Criminal Justice Division in the area of the prevention and control of corruption. The Commission may wish to consider, while adopting the draft code of conduct, the elaboration of a structured international plan of action against corruption, which might include guidelines for action by the United Nations on good governance and prevention and control of corrupt practices in public institutions and private business.

30. The Commission may wish to request the Secretary-General to request Member States to provide national legislation and regulatory measures on the prevention and control of corruption. On the basis of such a collection of legislation and other information provided by Member States, the Commission may wish to consider the advisability of requesting the Secretary-General to prepare model legislative and regulatory measures against corruption, together with compilations of best practices in preventing, detecting and controlling corrupt activities. Such tools, revised to suit the local legal system and local practice, could be used at the regional and national levels and could form the basis for joint activities with other relevant international organizations.

Notes

[1] *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C.7.

[2] *Official Records of the Economic and Social Council, 1995, Supplement No. 10* (E/1995/30), para. 69.

Annex

REVISED DRAFT INTERNATIONAL CODE OF CONDUCT FOR PUBLIC OFFICIALS*

I. GENERAL PRINCIPLES

1. A public office, as defined by national law, is a position of trust, implying a duty to act in the public interest. Therefore, the primary [ultimate] loyalty of public officials shall be to the public interests of their country as expressed through the [democratic] institutions of government, and not to [national or foreign] persons, political parties [or entities] [or specific government departments or agencies].

2. Public officials shall ensure that they perform their [duties and] functions efficiently [, diligently, honestly, responsibly] and effectively [and with integrity]. They shall at all times seek to ensure that public resources for which they are responsible are administered in the most effective and efficient manner.

3. Public officials shall be attentive, fair and impartial in the performance of their functions and, in particular, in their relations with the public. They shall at no time afford any undue preferential treatment to any group or individual, or discriminate against any group or individual, or otherwise abuse the power and authority vested in them. [This provision should not be interpreted as excluding any officially approved affirmative action policies to assist disadvantaged groups.]

II. CONFLICTS OF INTEREST AND DISQUALIFICATION

4. Public officials shall never in any way [not] use their official authority for the [improper] advancement of their own or their family's [illegitimate] personal or financial interest. They shall not engage in any transaction, acquire any position or function, or have any financial, commercial or other comparable interest that is incompatible with their office, functions and duties, or the discharge thereof.

5. All public officials designated under national law shall, unless exempted, declare relevant business, commercial and financial interests, or activities undertaken for financial gain upon entering the service. This information shall be updated regularly. In situations of possible or perceived conflict of interest between public officials' public duties and private interests, they shall disqualify themselves from any decision-making process relating to such conflict of interest.

6. Public officials shall at no time use public property, services, or [misuse] information acquired in the performance of, or as a result of, their official duties for activities not related to their official work.

7. Within [a] [the] stated period [of one/two years] after separation from public service, public officials holding managerial positions shall, within the framework of national law, obtain governmental permission prior to accepting employment or consultancy assignments from business or private concerns that are in [direct] financial relationship with the governmental department or agency in which such officials were employed. During the same period after separation, such permission shall also be required prior to engaging in any private or business activity [directly] related to, or dependent on, their previous position in public service.

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*Underlining indicates a change introduced on the basis of comments received. Words in square brackets indicate new or alternative formulations proposed by States.

III. DISCLOSURE OF ASSETS

8. Public officials holding managerial or policy-making positions as designated by and pursuant to procedures established by national law, shall disclose [to an identified authority and within a specified period of time] all personal property, assets and liabilities, as well as those of their spouses and/or other dependants [which exceed a stated minimum value]. Such officials shall also provide detailed information on the source of any property or asset acquired after their appointment to a senior post. All information provided shall be treated as confidential [and may only be disclosed within the framework of special procedures] [but may be disclosed at a country's discretion within the framework of special procedures].

IV. ACCEPTANCE OF GIFTS OR OTHER FAVOURS

9. Public officials must, as a matter of principle, refuse any gift which may have an influence on the exercise of their functions, performance of their duties or their judgement.

V. CONFIDENTIAL INFORMATION

10. Matters of a confidential nature in the possession of public officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise. Such restrictions shall apply also after separation from service.

VI. POLITICAL ACTIVITY

11. The political activity of public officials shall not be such as to impair public confidence in the impartial performance of their functions and duties.

VII. REPORTING, DISCIPLINARY ACTION AND IMPLEMENTATION

12. Public officials who violate the provisions of this Code shall be subject to the appropriate disciplinary, administrative or penal measures. as determined by national legal principles and procedures.

UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.15/1996/6
14 March 1996

ORIGINAL: ENGLISH

COMMISSION ON CRIME PREVENTION
AND CRIMINAL JUSTICE
Fifth session
Vienna, 21-31 May 1996
Item 3 of the provisional agenda*

REVIEW OF PRIORITY THEMES

Arrangements for convening an intergovernmental expert group to examine practical recommendations for the further development and promotion of mechanisms of international cooperation, including the United Nations model treaties on international cooperation in criminal matters, and for the development of model legislation on extradition and related forms of international cooperation

Note by the Secretary-General

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*E/CN.15/1996/1.

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INTRODUCTION

1. Pursuant to Economic and Social Council resolutions 1993/32 of 27 July 1993 and 1994/19, section II, of 25 July 1994, a one-day workshop entitled "Extradition and international cooperation: exchange of national experiences and implementation of extradition principles in national legislation" was organized during the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders by the Government of the United States of America and the Crime Prevention and Criminal Justice Branch of the Secretariat, in cooperation with the International Association of Penal Law. Drawing on a background paper prepared by the Secretariat (A/CONF.169/8), the workshop examined different approaches to establishing extradition relationships between States, including the experience of States in implementing extradition by means of executive decisions supported by domestic legislation and bilateral, regional and multilateral agreements. During the workshop, in the context of a discussion on possible follow-up, the International Association of Penal Law offered to act as host to an intergovernmental expert meeting to be held in the facilities of the International Institute of Higher Studies in Criminal Sciences at Siracusa, Italy, under the auspices of the Crime Prevention and Criminal Justice Branch, to examine practical recommendations for the further development and promotion of mechanisms of international cooperation (A/CONF.169/16, paras. 273 and 286).

2. The Ninth Congress, in its resolution 2, entitled "International cooperation and practical assistance for strengthening the rule of law: development of United Nations model instruments", urged the Commission on Crime Prevention and Criminal Justice to consider, subject to the availability of extrabudgetary funds, the convening of an intergovernmental expert group to examine practical recommendations for the further development and promotion of mechanisms of international cooperation, including the United Nations model treaties on international cooperation in criminal matters, as well as for the development of model legislation on extradition and related forms of international cooperation in criminal matters. The Ninth Congress also made recommendations on the terms of reference of this expert group, in the light of the discussion of the above-mentioned workshop on extradition (A/CONF.169/16, para. 1).

3. On the recommendation of the Commission on Crime Prevention and Criminal Justice at its fourth session, the Economic and Social Council adopted resolution 1995/27 of 24 July 1995, on the implementation of the resolutions and recommendations of the Ninth Congress. In section I of that resolution, the Council requested the Secretary-General to convene, utilizing extrabudgetary funds already offered for that purpose, and in accordance with the principle of equitable geographical distribution, a meeting of the intergovernmental expert group. In addition, the Council recommended that the expert group should, in the light of the discussion at the workshop held during the Ninth Congress, explore ways and means of increasing the efficiency of extradition and related mechanisms of international cooperation in criminal matters, having due regard to the rule of law and the protection of human rights, including where appropriate such measures as: (a) the provision of technical assistance in the development of bilateral and multilateral agreements based on the United Nations model treaties and other sources; and (b) the drafting of model legislation or agreements on international cooperation in criminal matters, alternative or complementary articles for existing model treaties, and articles for possible model multilateral instruments. The Council also recommended that a report on the convening of the expert group should be submitted to the Commission at its fifth session.

4. The present note contains information on the action taken by the Secretariat to convene the intergovernmental expert group, as well as proposals for consideration by the Commission on the work of the expert group and follow-up activities regarding the implementation of Ninth Congress resolution 2 and Council resolution 1995/27.

I. ACTION TO CONVENE THE INTERGOVERNMENTAL EXPERT GROUP

5. The International Association of Penal Law offered to make available the extrabudgetary resources necessary for convening the intergovernmental expert group. That offer was referred to by the Council in its resolution 1995/27, section I. The President of the International Association of Penal Law and of the International Institute of Higher Studies in Criminal Sciences reiterated that offer in a communication dated 18 October 1995 to the Chief of the Crime Prevention and Criminal Justice Branch, suggesting that the meeting of the expert group should take place at Siracusa, Italy, in the facilities of the Institute.

6. With a view to giving effect to the request for a report to the Commission at its fifth session, the Crime Prevention and Criminal Justice Division* undertook informal consultations in December 1995 with the President of the Institute, who was also representing the International Association of Penal Law, with the participation of representatives of a number of Member States that had expressed or demonstrated a keen interest in the matter during both the Ninth Congress and the fourth session of the Commission. The United Nations Interregional Crime and Justice Research Institute also participated in the consultations. The Crime Prevention and Criminal Justice Division welcomed the opportunity to discuss both substantive and organizational requirements and arrangements for convening the intergovernmental expert group at a time that would enable the report of the meeting of the expert group to be submitted to the Commission at its fifth session.

7. The issues that needed to be discussed included the size and composition of the expert group and its terms of reference, based on Council resolution 1995/27 and Ninth Congress resolution 2. Another one of the key matters involved was the determination of whether the resources identified by the International Institute of Higher Studies in Criminal Sciences and the International Association of Penal Law for convening the expert group were sufficient for ensuring adequate preparations for and servicing of the meeting, as well as the participation of experts from developing countries.

8. Regarding the composition of the expert group, the Crime Prevention and Criminal Justice Division emphasized the need to ensure that assistance would be made available to experts from developing countries and countries with economies in transition, by way of defraying travel and subsistence costs. Past experience had shown that, in the absence of such assistance, the participation of such countries tended to be extremely limited or, in many cases, impossible. In addition to the need to comply with the Council's request to the Secretary-General to apply the principle of equitable geographical distribution, the work of the expert group would greatly benefit from the broad participation and from the experiences of developing countries and countries with economies in transition. Furthermore, the recommendations that the expert group had been mandated to make to the Commission would not adequately cover all pertinent issues if the concerns of developing countries and countries with economies in transition were not reflected.

9. The Division also stressed the need to provide simultaneous interpretation in at least three languages (English, French and Spanish) during the meeting of the expert group. That would permit experts to fully participate in and contribute to the discussion, particularly taking into consideration the technical nature of such a discussion and the issues associated with extradition practice.

10. The President of the International Institute of Higher Studies in Criminal Sciences indicated that those issues would be taken into serious consideration in planning for the meeting of the expert group. The original intention of the Institute, in keeping with the practice followed by it in the organization of meetings or training courses, was to cover subsistence costs for participants from developing countries. It was, therefore, agreed that the Institute and the International Association of Penal Law would make every effort to identify

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*The Crime Prevention and Criminal Justice Branch was upgraded into a division, pursuant to General Assembly resolution 50/214 of 23 December 1995.

the resources required to defray reasonable travel costs for up to 10 experts from developing countries and countries with economies in transition and to provide interpretation in English, French and Spanish. During the consultations, the Crime Prevention and Criminal Justice Division appealed to the Member States participating in the consultations to assist, through voluntary contributions, in the organization and servicing of the expert group and in providing adequate follow-up to its work.

11. All participants in the consultations were interested in ensuring that the report to the Commission would facilitate follow-up action to Economic and Social Council resolution 1995/27, section I. It was stressed that it was also important to ensure that the technical cooperation value of the workshop on extradition, held during the Ninth Congress, was maintained and maximized, in accordance with the wishes of Member States with regard to the new format of the quinquennial congresses on the prevention of crime and the treatment of offenders, and that the related emphasis was placed on the organization of workshops, as expressed in General Assembly resolution 46/152 and Council resolutions 1993/32 and 1994/19, section II. In the consultations undertaken by the Division, it was concluded that the expert group should be composed of no more than 25 persons. That would be sufficient to ensure the participation of experts from all regions while being conducive to substantive discussion, as well as the exchange of information and knowledge. The possibility of arriving at conclusions and recommendations that would constitute progress in improving international cooperation in criminal matters would thus be increased. The limited size of the expert group would also make it possible for it to contribute to the enhancement of the technical cooperation value of follow-up to the workshop held during the Ninth Congress. The Division was of the view that, in addition to its mandated functions, the expert group should devote its attention to the development of a framework for training manuals on extradition practice, which could be used in training courses for criminal justice personnel from developing countries and countries with economies in transition. The President of the International Institute of Higher Studies in Criminal Sciences had stated that it was the intention of the Institute to host and organize such training courses in cooperation with the Division.

12. During the informal consultations, the Crime Prevention and Criminal Justice Division drew attention to the fact that Council resolution 1995/27, section I, and Ninth Congress resolution 2 reflected the preference of Member States for an integrated approach to the overall issue of instruments and modalities of international cooperation. It was, however, evident that one expert group, meeting for a limited period of time, was hardly in a position to arrive at concrete recommendations covering the broad range of issues associated with all forms of international cooperation in criminal matters. That conclusion was particularly reinforced by the realization of the constantly and rapidly changing needs of States faced with new and sophisticated forms of criminal activity. It was, therefore, agreed that the work of the expert group would be more productive if it would concentrate on extradition, a vast subject in itself. Other international cooperation mechanisms, such as mutual assistance in criminal matters and transfer of proceedings, would need to be dealt with separately. It was agreed that the International Institute of Higher Studies in Criminal Sciences, the International Association of Penal Law and interested Member States would make every effort to identify the resources necessary for the convening of a subsequent meeting of an expert group to deal with those matters and to arrive at recommendations pursuant to Council resolution 1995/27, section I.

13. Agreement was reached on the fact that the most practical means of implementing Council resolution 1995/27, section I, and Ninth Congress resolution 2 would be a four-day meeting of the expert group. The first two and one half days would be devoted to defining common problems in extradition practice, as well as identifying and recommending ways to improve such practice, while having due regard for the rule of law and the protection of human rights. That part of the meeting would also include a discussion on the drafting of model legislation or agreements on extradition, alternative or complementary articles of the Model Treaty on Extradition (General Assembly resolution 45/116, annex, of 14 December 1990) and articles for possible model multilateral instruments. During the next day, the expert group would concentrate on training and technical assistance mechanisms and materials to improve the level of extradition practice and to implement the recommendations reached by the group. The final one half of a day would be used to formulate and agree upon the report of the expert group, which would be prepared

by the Crime Prevention and Criminal Justice Division and would be submitted to the Commission at its sixth session for its consideration and action.

14. It was agreed that, to ensure a well-focused discussion, the experts would be requested to prepare and bring to the meeting presentations of problems encountered by States in extradition practice, such as treaty negotiations, provisional arrest procedures, documentation, standards of evidence, double criminality and the rule of specialty. Such presentations would serve as a stimulus for more substantive and productive discussion on problems faced in extradition practice by States in the various regions and would facilitate the drawing up of recommendations for improvements.

15. The Crime Prevention and Criminal Justice Division considered the convening of the expert group to be one of the activities of the United Nations crime prevention and criminal justice programme that would be best carried out in cooperation with the United Nations Interregional Crime and Justice Research Institute and the other institutes comprising the programme network, particularly in view of their productive involvement in the organization and convening of the workshops during the Ninth Congress. It was, therefore, decided that the institutes should continue to be involved and, for that purpose, would be requested by the United Nations Interregional Crime and Justice Research Institute to provide information on experts in extradition matters in their regions, in order to facilitate the selection process to be carried out by the Division.

16. In the informal consultations, the Crime Prevention and Criminal Justice Division drew attention to the fact that the Council, in its resolution 1995/27, section I, had recommended that a report on the convening of the expert group should be submitted to the Commission at its fifth session. Consequently, the Division urged the International Institute of Higher Studies in Criminal Sciences and the other participants of the consultations to facilitate the convening of the expert group prior to the fifth session of the Commission. In the ensuing discussion, the general view was that some of the prerequisites for ensuring a high-quality product for consideration by the Commission could not be met in the time available. Furthermore, it became evident that certain issues raised by the Division, particularly regarding the availability of the resources necessary to facilitate the participation of experts from developing countries and countries with economies in transition, required further study and clarification. The selection and invitation process would presuppose such clarification. Consequently, in view of the desirability of assembling a group of experts of high calibre whose busy schedules would require ample advance notice and because of the existence of a number of international events that would affect the capacity of the International Institute of Higher Studies in Criminal Sciences to host the meeting, it was concluded that convening the expert group prior to the fifth session of the Commission was not feasible. It was, therefore, decided that the expert group should be convened after the fifth session of the Commission, possibly early in July 1996, with a view to submitting the report of the expert group to the Commission at its sixth session.

II. OTHER RELEVANT MATTERS

17. During its fourth world conference on crime prevention and criminal justice, held at Bangkok from 15 to 17 November 1995, the Asia Crime Prevention Foundation decided, *inter alia*, to establish a working group with the aim of studying the issues of extradition and mutual legal assistance in Asia and the Pacific, taking into account other experiences at the regional and international levels. The working group is to focus its attention on: (a) reviewing the existing bilateral extradition and mutual assistance arrangements in the region; (b) assessing the adequacy of existing legislation and regulations and devising more modern and practical arrangements that take into account the emerging requirements of the countries in the region, as well as recent developments in international criminal law; and (c) examining the viability of drafting a convention on extradition and mutual assistance in criminal matters for Asia and the Pacific, in order to achieve more advanced and successful practice in that field, bearing in mind the various United Nations norms, guidelines and model treaties pertaining to that issue. The Asia and Crime Prevention Foundation requested the Asia

and Far East Institute for the Prevention of Crime and the Treatment of Offenders to extend its substantive support and cooperation to enable the working group to fulfil its task. The working group is to present its report to the fifth world conference on crime prevention and criminal justice, which is to be held towards the end of 1996. To assist the working group in its work, a questionnaire eliciting information on extradition and mutual assistance practice has been developed and sent to the countries in the region.

18. With the invaluable assistance of the Attorney-General's Department of Australia, the Department of Justice of Canada, the United Nations Interregional Crime and Justice Research Institute and the International Institute of Higher Studies in Criminal Sciences, the Crime Prevention and Criminal Justice Division had prepared draft manuals on the Model Treaty on Extradition and the Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, annex, of 14 December 1990). The draft manuals had been presented for comments to the Ad Hoc Expert Group Meeting on Implementing Legislation to Foster Reliance on Model Treaties, held at Vienna from 18 to 21 October 1993, and to the Commonwealth Secretariat's Conference on Mutual Legal Assistance, held at Oxford, United Kingdom of Great Britain and Northern Ireland, from 5 to 9 September 1994, and co-sponsored by the United Nations International Drug Control Programme and the United Nations Interregional Crime and Justice Research Institute. After incorporating the comments received from the participants at those events and the valuable input of many Governments and experts from around the world, the manuals were finalized and published in the *International Review of Criminal Policy* (Nos. 45 and 46).[1] The manuals, which were prepared to assist Member States in the use and application of the two model treaties, include a commentary under each of their articles that also deals with legislation that might be required to put the relevant provision into effect. The Division has received information regarding increased reliance by Member States on the model treaties in the course of bilateral and multilateral negotiations. That reliance has also been evidenced by an increase in requests from Member States to the Division for advisory services and other practical assistance regarding bilateral or multilateral cooperation in criminal matters. In this connection, it should be recalled that the Economic Community of West African States referred to the model treaties when preparing its Convention on Mutual Assistance in Criminal Matters and received direct technical assistance from the Division in the development of that Convention.

19. The report of the Ad Hoc Expert Group Meeting on Implementing Legislation to Foster Reliance on Model Treaties (E/CN.15/1994/4/Add.1), submitted to the Commission at its third session, included detailed recommendations that may serve as useful background for the work of the intergovernmental expert group to be convened in accordance with Council resolution 1995/27, section I. The report will be available to the Commission at its fifth session.

III. ACTION REQUIRED OF THE COMMISSION

20. The Crime Prevention and Criminal Justice Division will continue its efforts to clarify the above-mentioned issues, a prerequisite for convening the intergovernmental expert group. One of the more predominant issues remains the availability of extrabudgetary resources to permit the participation of experts from developing countries and countries with economies in transition and the adequate servicing of the meeting. In view of the agreement reached during the informal consultations to have the expert group concentrate on extradition, another issue requiring clarification is whether extrabudgetary resources will be available to permit the convening of another expert group meeting, to deal with mutual assistance in criminal matters and other forms of international cooperation, in order to fully comply with Council resolution 1995/27, section I, and Ninth Congress resolution 2.

21. It is important to ensure appropriate follow-up to the workshop on extradition and international cooperation held during the Ninth Congress by emphasizing and maximizing its technical cooperation value. The expert group could make a useful contribution in this direction by developing outlines of training manuals that could be prepared and used in training courses for criminal justice personnel from developing

countries and countries with economies in transition. Such training manuals could be structured for different groups of criminal justice personnel or officials involved in the negotiation of bilateral or multilateral treaties or charged with the application of such treaties. The manuals could supplement the manuals already prepared and published by the Division, forming a comprehensive package of training materials, including guidelines or models for implementing legislation. The elaboration of the training manuals and the organization of training courses would, however, require extrabudgetary resources.

22. The Commission may wish to encourage interested Member States to make voluntary contributions that would enable the Division to convene the intergovernmental expert group and fully implement Council resolution 1995/27, section I, as well as to elaborate the above-mentioned training manuals and organize training courses on improvements of practice in extradition and other forms of international cooperation in criminal matters.

23. The Commission may also wish to review the recommendations of the Ad Hoc Expert Group Meeting on Implementing Legislation to Foster Reliance on Model Treaties in the light of (a) the discussion that took place at the workshop on extradition and international cooperation that was held during the Ninth Congress and (b) Council resolution 1995/27, section I.

24. In view of the intergovernmental nature of the expert group, pursuant to Council resolution 1995/27, section I, the Commission may wish to encourage interested Member States to nominate experts with a view to facilitating the work of the Crime Prevention and Criminal Justice Division in making a final selection of the members of the group.

25. The work to be carried out by the Asia Crime Prevention Foundation working group on extradition and mutual legal assistance, as well as the information on these matters collected from countries in Asia and the Pacific, would be useful to the expert group in carrying out its work and to the Crime Prevention and Criminal Justice Division in collecting and disseminating information. The Commission may wish to encourage the Asia Crime Prevention Foundation to work closely with the Division in this matter. In addition, the Commission may wish to promote coordination of the activities of the Asia Crime Prevention Foundation related to extradition and mutual legal assistance with the activities of the expert group, which might be better achieved by encouraging their participation in each other's meetings.

Notes

[1]United Nations publication, Sales No. E.96.IV.2.